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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 29.9.2006.

Vidya Wati and others .... Appellants.

vs

Mohinder Paul and others .. Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Rohit Sharma,Advocate,for the appellants.
Mr.Sarwan Singh,Senior Advocate with
Mr.A.S.Parmar and Mr.N.S.Rapri,Advocates,
for the respondents.

Kiran Anand Lall, J.

The appellants-Vidya Wati etc.-were defendants before the trial court. In this second appeal, they have challenged the judgment and decree dated 28.2.1989 vide which the first appellate court accepted the appeal of the respondents-herein, Mohinder Paul etc., and decreed their suit for a declaration that they are in possession of the suit land as (full) owners thereof.

Bansi Lal (deceased) was the owner of suit land. He had mortgaged it, with Atma Ram (deceased), vide two unregistered mortgage-deeds, both dated 2.4.1946. The nature of mortgage was usufructuary. Part of the land was mortgaged for Rs.99/- and the remaining, for Rs.26/-. Both these transactions were mutated in revenue records, in the name of Atma Ram. Appellants are the successors-in-interest of Bansi Lal, and respondents are the successors-in-interest of Atma Ram.

These are the admitted facts.

The case of respondents-plaintiffs was that the appellants-defendants' right to redeem the land had expired on 2.4.1976. The land

remained in the possession of Atma Ram (mortgagee) so long as he was alive and since the time of his death, it is continuing in their possession. Atma Ram had become its owner with effect from 2.4.1976 due to extinguishment of appellants' right to redeem it. So long as he was alive, he remained in its possession, and after his death, it had come into their possession, as owners. The occasion for filing the suit arose as even after the extinguishment of the right of redemption with effect from 2.4.1976, Bansi Lal was being erroneously shown as a co-sharer- mortgagor in the revenue records. The relief claimed in the suit was for a declaration that they are owners in possession of the suit land measuring 18 marlas which is 1/4th share of 3 kanals 10 marlas, comprised in khasra no.64/30.

The stand of the appellants-defendants is that appellant no.4, Chaman Lal, had got both the mortgages redeemed on 20.4.1978, on payment of mortgage amount to Atma Ram who made endorsement in this regard on the back of mortgage-deeds which were thereafter handed over to Chaman Lal. Their further case is that subsequent to redemption, Atma Ram delivered the possession of land to them and since then, they have been in its possession.

The trial court held that the appellants-defendants had redeemed the land from Atma Ram and also taken its possession from him, as co-sharers. The claim of respondents-plaintiffs regarding their being in possession of the land, after having become its owners, by efflux of time, was declined. It was further held that they were estopped, by their act and conduct, from filing the suit. Resultantly, they were non-suited.

The first appellate court refused to affix its seal on the verdict that the land stood redeemed. It was further held that the appellants' right to

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redeem the land or recover its possession came to an end, with effect from 2.4.1976, by efflux of time, and the respondents had consequently become its full-fledged owners, and since 2.4.1976, they have been continuing in its possession, as owners.

Learned counsel for the appellants has not placed on record any substantial question of law. Infact, none arises in it. However, during arguments, he addressed this court on the following two questions of law which, according to him, are substantial questions of law:-

1. "Whether after the extinguishment of the right of redemption under law, any equitable right of redemption still existed, with the appellants?
2. Whether the respondents had waived their right in the land, by allowing its redemption in 1978 after accepting the mortgage amount and returning the mortgage-deeds?"

Learned counsel for both sides have been heard.

It is not disputed that the right of appellants to redeem the land had expired on 2.4.1976 i.e. on expiry of the prescribed period of 30 years from the date of execution of mortgage-deeds. But, the case of appellants is that Atma Ram had permitted its redemption on 20.4.1978 i.e. two years after 2.4.1976, and had received mortgage consideration in respect of the (two)mortgages and made endorsement in this behalf on the mortgage-deeds, Exs.D7 and D8. The respondents, of course, denied this fact. But, be that as it may, this fact is, even otherwise, immaterial, because as per the legal position, with effect from 2.4.1976, not only the mortgagor's right of

redemption stood extinguished, even their right of ownership qua the mortgaged land had come to an end. Section 27 of the Limitation Act, 1963, provides as under:-

> ***"27. Extinguishment of right to property.-*** *At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

Undisputedly, a mortgagor has a right to redeem the mortgage within a period of thirty years from the day the right to redemption accrues to him, and that, in the instant case, this right of appellant had come to an end on 2.4.1976 i.e. after the expiry of thirty years. The legal consequence thereof was that Atma Ram mortgagee, the predecessor-in-interest of the respondents, had become its full-fledged owner, in place of mortgagee, with effect from that day, and after his death, the respondents inherited his ownership rights in the land, through natural succession.

The contention of learned counsel for the appellants was that even after the extinguishment of respondents' (of mortgagors) right to redeem the land, the appellants continued to have an equitable right of redemption. To me, this proposition is not understandable. There is no provision under law providing an equitable right of redemption. In support of his contention, learned counsel relied upon *AIR 2003 SC 1017 Achaldas Durgaji Oswal (Dead) through L.Rs. vs. Ramvilas Gangabisan Heda (Dead) through L.Rs. and others.* I have carefully gone through this judgment but found that it has no connection with the proposition propounded by the learned counsel. A careful reading of this judgment only

implies that the right of redemption,now available to a mortgagor under law, has been provided to him on the basis of equitable consideration, after the contractual date of redemption. The matter becomes further clear from the observation in the judgment that on non-payment of redemption amount by the appointed time, the estate of the mortgagee becomes absolute and irredeemable but then equity intervenes to enable the mortgagor to redeem, ever after the appointed time. So, the judgment relied upon only termed the (legal) right of redemption which can be exercised within a period of 30 years from the date of accrual of right to redeem or recover possession, under Article 61 of the Limitation Act, 1963, as a right provided to a mortgagor by way of equitable consideration. It nowhere states that the right of redemption can be exercised, even after the expiry of the prescribed period of thirty years.

Section 27 of the Limitation Act, 1963 (supra), not only bars the remedy but also extinguishes the title. There is, therefore, no escape from the conclusion that in the instant case, by virtue of Section 27 of the Limitation Act, Atma Ram (predecessor of the respondents) had already become owner of the land, after the extinguishment of the right of the appellants therein, and as such, question of redemption of mortgage, which was no more subsisting, could not arise.

The other judgment relied upon by the learned counsel for the appellants, *AIR (35) 1948 Privy Council 76, Hafiz Mohammed Fateh Nasib vs. Sir Swarup Chand Hukum Chand, a firm and another*, has also absolutely no relevance to the point in hand, and as such the same need not be discussed.

In *1986 Punjab Law Journal 622, Bedi alias Bhedi and*

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another vs. Girdhari (since deceased) and others, it was very clearly held that the right of redemption extinguished by lapse of time cannot be revived, even by consent of parties, and that even if mortgagee agrees to redemption, mortgagor's rights are not revived and further that Section 27 of the Limitation Act, 1973, not only bars the remedy but also extinguishes title. In that case, even mutation of redemption had been sanctioned, and that, too, in the presence of the mortgagee. Still, this court held that mutation of redemption sanctioned after the period prescribed under the Limitation Act for redemption of mortgage, did not give any right to the mortgagor because at the time of mutation, mortgagor's right to redeem the mortgage had already come to an end. So, since Atma Ram had become owner of the suit land, much prior to 20.4.1978, due to the appellants having ceased to have any title therein, question of redemption of mortgage, which was no more subsisting, could not arise. Also, there could be no question of waiver, by the respondents, of their any right in the land, by permitting the redemption of mortgage, which was no more subsisting in the year 1978, as they had become its owners in the year 1976.

No other argument was addressed.

In view of the above, I do not find any merit in either of the two questions raised by the learned counsel for the appellants (terming those as substantial questions of law). The appeal shall, accordingly, stand dismissed.

29.9.2006. (Kiran Anand Lall)
vs. Judge.